



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 16, 1993

Mr. Charles Karakashian, Jr.
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR93-565

Dear Mr. Karakashian:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (former V.T.C.S. article 6252-17a).¹ Your request was assigned ID# 21012.

The Texas Department of Public Safety (the "department") received an open records request for "DPS file # RFO88237," which pertains to the department's capital murder investigation that ultimately resulted in the arrest and conviction of Gary Lynn Sterling. You seek to withhold the file pursuant to sections 552.103 (former section 3(a)(3)) and 552.108 (former section 3(a)(8)) of the Open Records Act.

To secure the protection of section 552.103, a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation. Open Records Decision Nos. 588 (1991); 452 (1986). The mere chance of litigation will not trigger the section 552.103 exception. Open Records Decision Nos. 437 (1986); 331, 328 (1982). To demonstrate that litigation is reasonably anticipated, the governmental body must furnish evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.* Further, section 552.103(b) (former section 3(e)) of the act provides

For purposes of this section, the state or a political subdivision is considered to be a party to litigation of a criminal nature until the applicable statute of limitations has expired or until *the defendant*

¹The 73d Legislature has repealed article 6252-17a, V.T.C.S. Acts 1993, 73d Leg. ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

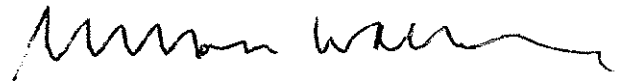
has exhausted all appellate and postconviction remedies in state and federal court. (Emphasis added.)

The Assistant Attorney General who represents the state in such matters has demonstrated to this office that the criminal defendant is currently in the process of pursuing a federal appeal of his conviction. Accordingly, we conclude that litigation regarding this matter is reasonably anticipated at this time and that the department may therefore withhold the requested information pursuant to section 552.103 of the Open Records Act.²

We assume, however, that none of the information in the records at issue has previously been made available to the criminal defendant. Absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.* through discovery or otherwise, no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). To the extent the defendant has seen or had access to these records, there would be no justification for now withholding such information from the requestor pursuant to section 552.103.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



William Walker
Assistant Attorney General
Open Government Section

WW/rho

Ref.: ID# 21012
ID# 21042
ID# 21527

Enclosures: Submitted documents

²Because we resolve your request under section 552.103, we need not address your section 552.108 contentions at this time.

cc: Mr. Tom McNeeley
Paralegal
Texas Resource Center
1206 San Antonio
Austin, Texas 78701
(w/o enclosures)